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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KEVIN CORNING, et al.,  
Plaintiffs,  
v.  
MTD PRODUCTS, INC., et al.,  
Defendants.

CASE NO. C17-120 RAJ  
ORDER

This matter comes before the Court on the parties' motions *in limine*. Dkt. ## 35,  
36. The Court **GRANTS in part and DENIES in part** the motions.

**I. BACKGROUND**

Plaintiff Corning was injured while operating a Sears Craftsman lawn tractor. The parties are set to try this matter on claims for design and manufacturing defect and the implied warranty of merchantability. The parties are now before the Court on their respective motions *in limine*.

**II. LEGAL STANDARD**

Parties may file motions *in limine* before or during trial "to exclude anticipated prejudicial evidence before the evidence is actually offered." *Luce v. United States*, 469 U.S. 38, 40 n. 2 (1984). To decide on the motions *in limine*, the Court is generally guided

1 by Federal Rules of Civil Procedure 401 and 403. Specifically, the Court considers  
2 whether evidence “has any tendency to make a fact more or less probable than it would  
3 be without the evidence,” and whether “the fact is of consequence in determining the  
4 action.” Fed. R. Civ. P. 401. However, the Court may exclude relevant evidence if “its  
5 probative value is substantially outweighed by a danger of one or more of the following:  
6 unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or  
7 needlessly presenting cumulative evidence.” Fed. R. Civ. P. 403.

8 **III. PLAINTIFF’S MOTION IN LIMINE**

9 Plaintiff Corning seeks to exclude testimony or evidence regarding his prior  
10 convictions or publicly available status as a sex offender. Dkt. # 36. Defendants wish to  
11 include testimony or evidence regarding Plaintiff’s 2004 convictions under Federal Rule  
12 of Evidence 609(a), as well as his status on the sex offender registry. Dkt. # 40.  
13 Defendants claim that the information will be necessary to potentially impeach Plaintiff,  
14 and to show that Plaintiff lost work and income due to his background rather than the  
15 accident. *Id.*

16 Rule 609(a)(1)(B) states that a party may attack:

17 a witness’s character for truthfulness by evidence of a criminal  
18 conviction . . . for a crime that, in the convicting jurisdiction,  
19 was punishable by death or by imprisonment for more than one  
20 year, the evidence . . . must be admitted in a criminal case in  
21 which the witness is a defendant, if the probative value of the  
22 evidence outweighs its prejudicial effect to that defendant[.]

23 Fed. R. Evid. 609.

24 Defendants wish to include evidence regarding Plaintiff’s guilty plea to rape of a  
25 child in the third degree, bail jumping, and intimidating a witness. Dkt. # 40. The Court  
26 must determine whether the probative value of admitting these prior felonies outweighs  
27 their prejudicial effect on Plaintiff. To do so, the Court considers “(1) the impeachment

1 value of the prior crime; (2) the point in time of the conviction and the witness's  
2 subsequent history; (3) the similarity between the past crime and the charged crime; (4)  
3 the importance of [Plaintiff's] testimony; and (5) the centrality of [Plaintiff's]  
4 credibility." *United States v. Hursh*, 217 F.3d 761, 768 (9th Cir. 2000). Though the  
5 Court finds that the first factor—the impeachment value of the prior crimes—weighs in  
6 favor of admitting the prior felonies, it concludes that the overall balance of the factors  
7 weighs against admission. Importantly, Plaintiff's testimony and credibility are unlikely  
8 to be determinative in this matter. Defendants wish to discredit Plaintiff's testimony as to  
9 his injuries and his lost work, but they will have access to medical records and physicians  
10 as well as select financial documents.<sup>1</sup> The Court finds that the prejudicial effect on  
11 Plaintiff is severe in light of the nature of his prior felonies and the little relevance they  
12 have in the context of the pending matter. Therefore, the Court **GRANTS** Plaintiff's  
13 motion with regard to the nature and specific identities of his prior felonies. Of course, if  
14 Plaintiff opens the door to the details or identities of his prior convictions, then  
15 Defendants should be permitted to introduce evidence regarding the same. The Court  
16 may take a brief recess at the conclusion of Plaintiff's direct examination and prior to  
17 Defendants' cross examination to determine and inquire into the extent to which  
18 Defendants believe Plaintiff may or may not have opened the door to the specifics of his  
19 prior convictions.

20 However, the Court finds that the probative value of the fact of Plaintiff's prior  
21 convictions outweighs the potential prejudice to Plaintiff. That is, the Court will not  
22 foreclose Defendants' ability to impeach Plaintiff with his deposition testimony that his  
23 background may have cost the company certain business accounts. The Court will admit  
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26 <sup>1</sup> In addition, Defendants' response brief references a host of inquiries appropriate for  
27 trial to elicit the response that Defendants seek. Dkt. # 40 at 7 (stating that "Plaintiffs have  
produced no accounting documents showing they had these accounts before the accident, when  
they lost the account, what they did to preserve the account or why they lost the account.").

1 evidence that Plaintiff has a criminal background, and specifically that he has three prior  
2 felonies, but will preclude admission of the underlying nature or details of those crimes.<sup>2</sup>  
3 As such, the Court **DENIES** Plaintiff's motion to the extent he seeks to preclude  
4 admission of the fact of his prior convictions.

5 Defendants also wish to admit evidence regarding Plaintiff's public status as a sex  
6 offender. Dkt. # 40. Plaintiff argues that admitting evidence of his status "is unduly  
7 prejudicial, [its] probative value is substantially outweighed by the danger of unfair  
8 prejudice, confusing issues, wasting time, and misleading the jury[.]" Dkt. # 44 at 2; *see*  
9 *also* Fed. R. Evid. 403. Defendants argue that Plaintiff's publicly available status is  
10 central to Defendants' argument that Plaintiff did not lose eighteen accounts due to his  
11 injuries, but rather "[d]ue to some of [his] background." Dkt. # 41-8 at 10 (conceding  
12 that Plaintiff gave up his ownership interest in the business when his background caused  
13 a substantial loss of work). For the same reasons that the Court will not admit the  
14 underlying nature of Plaintiff's crimes, the Court will similarly preclude the admission of  
15 Plaintiff's status as a sex offender. The Court finds that the probative value of this  
16 evidence is substantially outweighed by the prejudicial effect on Plaintiff. But if Plaintiff  
17 opens the door to his status on the sex offender registry, then Defendants should be  
18 permitted to introduce evidence regarding the same. Accordingly, the Court **GRANTS**  
19 Plaintiff's motion with regard to his status as a sex offender.

20 **IV. DEFENDANTS' MOTION IN LIMINE**

21 Defendants wish to exclude portions of Plaintiff's deposition testimony and  
22 preclude Plaintiff from testifying about "discussions with his medical providers and the  
23 nature, extent, treatment, and cause of his injuries[.]" Dkt. # 35 at 1. Defendants claim  
24 that the deposition excerpts and testimony would amount to hearsay as well as improper

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26 <sup>2</sup> To reiterate, Defendants may not specifically identify the three felonies; the only  
27 admissible evidence at this stage is the fact that Plaintiff has been convicted of three felonies.

1 layperson testimony. *Id.* Plaintiff wishes “to testify to the medical treatment he received  
2 and parts of his body that were in pain due to the incident/injured due to the incident.”  
3 Dkt. # 42. Plaintiff further concedes that “[m]edical diagnosis would be left to medical  
4 provider’s testimony such as Dr. Clark.” *Id.*

5 Federal Rule of Evidence 701 provides that “[i]f a witness is not testifying as an  
6 expert, testimony in the form of an opinion is limited to one that is: (a) rationally based  
7 on the witness’s perception; (b) helpful to clearly understanding the witness’s testimony  
8 or to determining a fact in issue; and (c) not based on scientific, technical, or other  
9 specialized knowledge within the scope of Rule 702.” Fed. R. Evid. 701. However,  
10 “[j]ust because a lay witness cannot testify about his opinion as to the causation of the  
11 emotional distress does not mean that a plaintiff cannot testify about the surrounding  
12 facts which prove a causal link between the alleged wrong and the alleged damage, even  
13 without an expert.” *Boren v. Harrah’s Entm’t Inc.*, No. 2:08-CV-00215-GMN, 2010 WL  
14 4340641, at \*2 (D. Nev. Oct. 26, 2010).

15 Plaintiff may testify and include deposition testimony regarding his observation  
16 and experience as a result of the accident. But he may not opine on diagnoses, scientific  
17 or medical opinions—including statements that his doctors may have made to him—or  
18 the medical cause of his injuries, and he may not offer opinions regarding his medical  
19 records. Accordingly, the Court **GRANTS in part** Defendants’ motion.

20 **V. CONCLUSION**

21 For the foregoing reasons, the Court **GRANTS in part** the motions. Dkt. ## 35,

22 36.

23 Dated this 16th day of March, 2018.

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The Honorable Richard A. Jones  
United States District Judge